



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 CRIMINAL WRIT PETITION NO. 1574 OF 2024

Sagar Bhimrao Badade

VERSUS

Priya @ Shital Sagar Badade

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Mr. Vikhe Pratap Babasaheb, Advocate for the Petitioner

CORAM : Y. G. KHOBRAGADE, J.

Dated : 24th February, 2025

PER COURT :-

1. Heard the learned counsel appearing for the petitioner at length.

2. By the present petition under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to the order dated 10.07.2024 passed by the learned Additional Sessions Judge, Kopergaon Dist. Ahmednagar in Criminal Revision Application No. 25 of 2023 and thereby upholding the order dated 17.03.2023 passed by the Additional Chief Judicial Magistrate, Kopergaon in Criminal Misc. Application No. 476/2018, whereby, the petitioner/ husband was directed to pay Rs.10,000/- per month towards maintenance to the Respondent/wife from the date of institution of the application i.e. 25.09.2018.

3. The petitioner is original non applicant/husband and the present Respondent is original applicant/wife in Criminal Misc. Application No. 476 of 2018. For the sake of brevity, I would refer to the parties the present petition in their original capacity as 'Applicant' and 'Non applicant'.

4. It is a matter of record that, on 28.05.2014, the marriage between the applicant and non applicant was solemnized at Shirdi as per Hindu customs and rites. After marriage, the Applicant cohabited with the non applicant. According to the applicant, the Non-applicant inflicted domestic violence upon her. Though some efforts were made for conciliation of the matrimonial dispute but these efforts were unsuccessful. On 23.06.2016, the applicant made phone call to non applicant and visited Kopergaon for cohabitation with him but the non applicant refused to cohabit with her. The Non-applicant mercilessly beat her. Ultimately she was compelled to stay with her parents and the non applicant failed to maintain her. Therefore, on 08.07.2016, she lodged a report with the Rajya Mahila Ayog. Thereafter, she filed Criminal Misc. Application No. 419 of 2018 alleged about raising of domestic violence against her at the hands of her husband and his relatives. Therefore, the applicant prayed for maintenance.

5. The applicant further stated in her application that, the non applicant was serving with The Merchant Navy and drawing salary of more than Rs. 3 lakhs. Besides this, the non applicant is having irrigated land at Malegaon Thadi, Tq. Kopargaon and drawing income of Rs. 8 to 9 lakhs per year. Further, the non applicant having bungalow at Pune and drawing monthly rent of Rs.70000/- and, therefore, she is entitled for monthly maintenance of Rs.30,000/- per month.

5. After service of summons, the non applicant has filed a written statement at Exh. 18 and denied claim of the applicant. According to non applicant, the applicant wife has made wild allegations against him. The applicant is highly educated and holds an MBA degree. Prior to marriage the applicant was serving with Muthoot Finance Company at Sangamner. The non applicant further stated that, the applicant was avoiding talking to him. Therefore, the applicant is not entitled for maintenance.

6. In order to prove the quantum of maintenance, both the parties examined themselves by filing evidence affidavit and were cross-examined vice versa.

7. On 17.03.2013, the learned Additional Chief Judicial

Magistrate passed the order and directed the non applicant to pay Rs.10,000/- per month towards maintenance to the applicant/wife with a cost of Rs.5000/-.

8. Being aggrieved by the said judgment and order, the non applicant filed Criminal Revision Application No. 25 of 2023 before the learned Additional Sessions Judge, Kopargaon, Dist. Ahmednagar. On 10.07.2024, the learned Revisional Court passed the impugned order and upheld the judgment and order dated 17.03.2023 passed by the learned Additional Chief Judicial Magistrate in Criminal Misc. Application No. 476 of 2018. Being aggrieved by the said order, the petitioner/non applicant filed the present petition.

9. The learned counsel for the petitioner/non applicant canvassed that, during Covid-19 period, the non applicant terminated from his service and is now unemployed. Thereafter non applicant secured job in a private school and drawing salary of Rs.9000/- per month. Therefore, impugned order passed by the learned Additional Chief Judicial Magistrate granting maintenance of Rs.10000/- per month and confirmed by the learned Additional Sessions Judge is illegal and bad in law.

10. Needless to say that, the Petitioner/non applicant has not denied the relationship of husband and wife between him and the applicant. It is also not in dispute that, after marriage, the applicant cohabited with him at her matrimonial house. On the face of the record, it appears that, on 14.08.2015, the maternal uncle of the non applicant had visited the applicant at her matrimonial house. The maternal uncle and mother of the non applicant gave understanding to the applicant that she should stay at her parents' house for some time and that they would bring her back after the non applicant returned home and they would manage to send the applicant at her parents house. Thereafter matrimonial dispute arose. The record speaks that, some efforts were made for conciliation of matrimonial dispute between the applicant and non applicant but said efforts were unsuccessful. Therefore, the applicant was compelled to stay at her parents house.

11. Section 125 of the Criminal Procedure Code provides for maintenance by the husband to the wife, if the wife does not have sufficient means and unable to maintain herself. The applicant wife specifically stated in her evidence affidavit that, at the relevant time, her husband/non applicant was serving with

Merchant Navy and was drawing monthly salary of Rs. 3 lakhs.

12. The Non applicant has filed a reply at Exh. 18 and denied all adverse allegations made against him. The non applicant admitted that, he was serving with Merchant Navy but his service terminated. However, the Petitioner/non applicant has not produced any evidence as to why he has been removed from service by the employer.

13. In evidence affidavit, the non applicant stated in paragraph No. 16 that, he is working as an office superintendent with Shri Chakradhar Swami D.L.Ed. College on temporary basis and drawing salary of Rs. 9000/- per month. However, the petitioner/non applicant has not produced any document about termination of his service from Merchant Navy and his appointment order with Shri Chakradhar Swami D.L.Ed. College as office superintendent. Therefore, considering the evidence available on record, the learned Additional Chief Judicial Magistrate directed the petitioner/non applicant to pay Rs.10,000/- per month to the applicant towards maintenance from the date of application.

14. On 10.07.2024, the learned Additional Sessions Judge passed the impugned order holding that, the present petitioner/

non applicant was serving with Merchant Navy and earning handsome salary. The non applicant claimed that he is removed from service of Merchant Navy and he is doing private job in a college on temporary basis and earning salary of Rs.9000/- per month. But, the non applicant has not produced any documentary evidence on record to that effect. Though the non applicant produced a letter stating that, he is appointed as Office Superintendent and drawing salary of Rs.9000/- per month however, the non applicant did not examine any person from Shri Chakradhar Swami D.L.Ed. College to prove his employment and salary of Rs. 9,000/-. Therefore, declined to interfere with the findings recorded by the learned Additional Chief Judicial Magistrate. Therefore, findings recorded by both the Courts below appears just and proper, hence, I do not find substantial grounds to interfere with said findings. Hence, the Criminal Writ Petition is dismissed at the threshold.

(Y. G. KHOBRAGADE, J.)